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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of DONNA MARIE CONNELLY; KAREN FRITZ as Conservator, Petitioner and Respondent, v. SUNIL KEWALRAMANI, Objector and Appellant.	G054862 consol. w/ G054873 (Super. Ct. No. 30-2014-00715343) O P I N I O N

Appeal from orders of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Affirmed.

Sunil Kewalramani in pro. per.

Donna Bader for Petitioner and Respondent.

The trial court appointed a Guardian ad Litem (GAL) for Donna Marie Connelly four years ago when she was 81 years old. As part of Connelly's conservatorship proceedings (initiated by her daughter Samantha Heflin), the GAL filed a petition to appoint a successor trustee for Connelly's trust estate. The court, on its own motion, ordered the trustee, Sunil Kewalramani, to file an accounting. It considered both matters during one trial lasting several days. The court issued one statement of decision but two orders regarding its rulings. Kewalramani appealed from both orders and this court consolidated his appeals.

In his appellate briefing, Kewalramani states he is abandoning his appeal from the order removing him as trustee (G054873) because "he no longer wishes to be co-trustee." When a party abandons an issue on appeal, we need not discuss it further. This leaves for our consideration the court's order disallowing several expenditures on Kewalramani's accounting and imposing surcharges against him (G054862). We have considered Kewalramani's challenges to this order and have determined they all lack merit. We affirm the court's two orders.

FACTS

I. *The Trust*

Connelly established the "Donna Marie Connelly 1989 Revocable Trust (Trust) in October 1989, when she was unmarried. She was the sole trustee. In March 2006, she married Kewalramani, who was 35 years younger than she was. They had a premarital agreement, in which Connelly itemized her separate property. She estimated the total value of her assets was approximately $1.39 million, which included three pieces of real property (her Garden Grove residence and two properties in Victorville). She valued her cash and investments at $64,635, and her debts as $122,541. Kewalramani also itemized his separate property, which consisted of a car worth $1,000 and a checking account worth $1,000. His debts totaled $2,500 (credit card debt). He worked as an

accounting manager and had two Masters Degrees (Masters of Business Administration and Masters in Accounting).

When Connelly and Kewalramani divorced in May 2011, after five years of marriage, Connelly prepared a "Declaration of Disclosure" of her assets. She valued her estate at $830,248, her cash/investments at $32,248, and her debts at $125,423.

A little over two years later, on September 12, 2013, Connelly amended her Trust. She appointed Kewalramani as co-trustee, and his brother (Brother), successor trustee. The Trust provided, "No bond or undertaking shall be required of any individual who serves as trustee under this instrument." Additionally, it stated trustees "shall be entitled to reasonable compensation for services rendered, payable without court order."

The Trust stated Connelly had three living children, Heflin, Sharon Sjeie (Sharon), and John Connelly (John).[1] The Trust expressly stated, "[I]n no event shall . . . [Heflin] be appointed to serve as trustee." The Trust also included a disinheritance clause, stating, "The [s]ettlor has specifically omitted to make any provision in this trust for her children [Sharon and John]. It is settlor's intention that they shall not take any part of settlor's estate passing under this trust."

Connelly also appointed Kewalramani to act as her healthcare agent, attorney-in-fact under her durable power of attorney, and the executor of her pour-over will.

II. *Petition for Conservatorship and Appointment of Guardian Ad Litum*

Seven months after Connelly amended her trust to name Kewalramani co-trustee, Heflin filed a petition in April 2014, to create a conservatorship for her mother, with Heflin acting as the conservator. Heflin filed a declaration in support of her petition. She stated her elderly mother until recently "was very much involved in her own finances, buying and selling real estate[,] and managing rental properties." She testified

[1] We refer to some of the people involved in this case by their first names for clarity and convenience. We intend no disrespect by this practice.

she noticed a change in her mother's mental capacity starting in 2011. Heflin detected Connelly, a former schoolteacher, was having trouble remembering basic English concepts when tutoring her various students. In November 2012, Connelly called Heflin asking for help removing "'this guy out of my house,'" because she apparently no longer recognized her 18-year-old grandson who had been staying with her.

Heflin declared Connelly was recently experiencing "significant issues" with her health and memory. For example, she did not know the names of her children/grandchildren, the nature of her assets, or how to write checks. Although her driver's license had been revoked, Connelly drove her car and was involved in an accident, but had no memory of the incident. She was unable to perform basic tasks such as making food, using the telephone, washing clothes, or cleaning herself after episodes of incontinence.

Heflin knew Kewalramani had taken over her mother's finances, and she suspected part of Connelly's estate was missing. Heflin stated Connelly did not remember she divorced Kewalramani and she still called him her husband. Heflin knew that Kewalramani moved Brother, and his father, into Connelly's residence to work as caretakers, but they lacked experience. She noted they were living rent-free and she assumed they were likely taking advantage of Connelly's assets. Heflin discovered a Charles Schwab account worth $600,000 in 2005 was now worth $40,000, and her mother had no idea where the money went. When she asked Kewalramani, he did not know about the missing money and told Heflin he had sold one of Connelly's Victorville properties and put the money into his own account. She later determined the property sold for $170,000 in October 2013, and Connelly's bank statement showed a balance of $1,160.

Heflin attached to her declaration copies of documents showing she was Connelly's general power of attorney and agent for health care decisions. Connelly executed these documents in 2005.

Connelly filed a declaration opposing the petition. She handwrote the following statement: "I do not want [Heflin] as my conservator. I do not want [Heflin] in my life. I can take care of myself. I love [Kewalramani and Brother] and I want them in my life." Kewalramani also filed an opposition, but a copy is not included in our record.

A minute order of a hearing held in June 2015, indicated deputy public defender Jon Feldon represented Connelly. The order stated that the parties agreed to have a "Private Professional Fiduciary (PPF) . . . appointed as conservator of the estate." Heflin withdrew her request to be appointed, and Kewalramani withdrew his objection. Kewalramani agreed to provide Connelly's medical updates to Heflin. The court scheduled a hearing to consider the medical condition of the "proposed conservatee."

In July 2015, the court held a review hearing, during which Feldon asked the court to appoint a GAL for Connelly. The court appointed Christina McGonigle, and ordered that she be given access to confidential reports related to Connelly's health. It ordered that Connelly's estate would pay the GAL's fees.

In September 2015, the court's minute order indicated it considered the GAL's report and ordered Kewalramani to provide an accounting. The court specified, "The accounting should also include the proceeds of sales of the real properties and loans from the year 2005 to the present. The [c]ourt expects the [a]ccounting to be filed [five days] prior to the hearing [scheduled for December 8, 2015]."

In addition, the court ordered Kewalramani to provide the GAL with copies of all estate-planning documents, including powers of attorney, wills, and trusts. The court also appointed a "Geriatric Care Manager" to prepare a report before the next hearing.

One week later, on September 23, 2015, the GAL petitioned for the appointment of Karen Fritz to serve as the conservator. The petition alleged Connelly "suffers from dementia (vascular and [A]lzheimer's [disease]), hypertension, knee pain,

incontinence, and acute [urinary tract infection]. She suffers from memory deficits and impaired concentration. She completed a [Health Assessment Program of Seniors (HAPS)] evaluation and the neuropsychologist deemed her vulnerable to financial abuse." The petition requested that Connelly's Trust pay the conservator fees, and the trustee "account and report annually" to the conservator.

III. *Frozen Accounts*

In November 2015, Kewalramani filed an ex parte petition to allow access to the conservatorship bank accounts. Kewalramani stated he was co-trustee of the Trust, he held a power of attorney for Connelly, and he was a co-signatory on three accounts at Chase Bank. He explained Chase Bank recently froze Connelly's accounts after Heflin lodged a fraud complaint with the bank alleging Kewalramani was financially abusing Connelly. Kewalramani maintained he needed access to these accounts to perform his duties as trustee and to complete the court-ordered accounting of her assets.

In his supporting declaration, Kewalramani maintained he and Connelly remained friends after their divorce. Kewalramani stated Connelly often complained Heflin treated her poorly, "like she was stupid and a fool." He asserted that in 2012, Heflin tried to make Connelly give her the sale proceeds of one of her Victorville properties. After Connelly refused, Heflin "started being very abusive towards her." Heflin would call Connelly names, and a few times Connelly called the police. The fighting made Connelly depressed and this is when Kewalramani hired caregivers to help Connelly. The caregivers provided companionship and took Connelly to the senior center every day.

Kewalramani explained caregivers were very expensive and required a level of supervision he was unable to provide because he lived in Los Angeles. Kewalramani asked Brother to move into Connelly's house and help manage the caregivers and keep Connelly company so she did not have to live by herself. Heflin was not an option for this task because she was always fighting with her mother.

Kewalramani explained he opened a Home Equity Line of Credit (HELOC) account with Chase Bank to pay Connelly's expenses. Because he was co-trustee of the Trust that owned the residence, the application required both he and Connelly sign as borrowers. Kewalramani stated they used his credit and income to get the loan approved.

Starting in October 2015, he noticed the HELOC account was blocked and he was unable to use the money to pay for Connelly's expenses. He eventually learned from the bank's fraud department that the account was blocked due to Heflin's report he was defrauding Connelly. The bank representative spoke with Connelly, determined she suffered from a diminished mental capacity, and accused Kewalramani of fraud. Because the accounts were frozen, Connelly's social security and retirement benefit payments could not be directly deposited, and scheduled online bill payments would not be made. Kewalramani asked the court to order Chase Bank to remove the blocks on his and Connelly's checking and HELOC accounts.

At the hearing, the court considered the GAL report, which is not part of this record. The minute order reflects the court ordered Chase Bank to unfreeze the accounts "provided that bond is posted" in the amount of $1,390,835.

IV. *Preliminary Accounting*

A few days later, Kewalramani filed a document called "Inventory and Preliminary Accounting" of the Trust. Kewalramani, now represented by counsel (Grenville Pridham) presented documents showing Connelly's Garden Grove residence was worth approximately $462,473 and her other assets totaled approximately $77,000. Kewalramani acknowledged these values were significantly lower than what Connelly had written down in the 2006 prenuptial agreement ($1.39 million).

Kewalramani attempted to explain the discrepancy. He stated that in 2006, real property values were at a "peak" and people expected the values to increase more. At the time, Connelly believed her Garden Grove residence was worth $600,000, and the two Victorville properties were valued at $250,000 each. Kewalramani could not account

for what other assets Connelly may have factored into the $1.39 million valuation. He was aware Connelly owned two houses in Arizona with a daughter, who was now deceased (Lanna Harris). He did not have a copy of the mortgages for those two properties, but believed they had a total equity of $225,000. In addition, Kewalramani was aware that Connelly was given two undeveloped lots in Victorville from one of her former renters, and she quitclaimed the deeds to Heflin in 2014. He was unaware of the value of the two lots.

Kewalramani listed the "actual values" of Connelly's real property based on their sale prices. He stated the two homes in Victorville sold for $110,000 and $170,000 in 2012 and 2013, respectively. He explained a mortgage on the Garden Grove property was partially paid by $110,000 of the real estate sale proceeds. Kewalramani did not believe Connelly made any money from the sale of the Arizona homes after her daughter died because they were "mortgaged to the limit."

Kewalramani stated that contrary to Heflin's contention, Connelly never had $600,000 in a Charles Schwab account. In the prenuptial statement, Connelly reported the Schwab account was valued at $57,927, which was confirmed by a forensic accountant who reviewed Connelly's 2005 taxes and bank statements (attached as exhibit No. 4 to the accounting).

As for the current value of Connelly's assets, Kewalramani stated the only asset was the Garden Grove residence, valued at $539,000. He explained the HELOC was for $125,000 and $85,000 had been withdrawn before Heflin froze the accounts. The bank transferred all the account balances to pay down the HELOC, making the current balance on the line of credit $77,000.

Kewalramani stated that once the HELOC was restored, the following bills must be paid: (1) $7,000 in credit card debt; and (2) $10,000 of his personal funds used to care for Connelly the past two months. He calculated that if these sums are subtracted

from the available line of credit, Connelly would have $23,000 available in cash. She had no other liquid assets, and her only income was from her pension and social security.

Attached to the inventory were documents supporting the valuation of Connelly's real estate. In addition, there was Greg A. Raffaele's declaration. He was a certified public accountant, certified valuation analyst, forensic certified public accountant, and certified divorce financial analyst. He stated Kewalramani retained him to verify how much money Connelly had in her Charles Schwab account. He declared the highest IRA and Trust balances were $25,000 and $38,000.

V. *Failure to Post Bond*

In early December 2015, Kewalramani filed an ex parte application asking the court to "reconsider [the] bond." His attorney, Pridham, declared the prior bond was based on an incorrect and inflated valuation of the Trust estate. Connelly's primary asset was her residence, encumbered by a $77,000 HELOC.

In the court's minute order dated December 8, 2015, the court followed the GAL's recommendation to reduce the bond ordered in November from $1,390,825 to $800,000. However, Kewalramani still did not post the bond, and the bank accounts remained frozen. Kewalramani did not pay the Geriatric Care Manager who performed the court-ordered Geriatric Care Management Plan in October 2015.

On February 2, 2016, Kewalramani filed a declaration, discussing what documents he could submit to the court that related to accounting. He stated a forensic accountant prepared a report of Connelly's accounts from October 1, 2013, to December 31, 2015. Kewalramani explained that since November 2015, he and Brother had been using their personal bank accounts and credit cards to pay for Connelly's expenses. He stated, "I will submit a final accounting for it once the freeze on [Connelly's] bank accounts is removed." He added, the forensic accountant's report did not include information listed in exhibits 18 and 19, which reflected funds Connelly and

Kewalramani transferred between them and expenses Kewalramani paid for Connelly until October 2015.

Kewalramani explained that before the HELOC, he opened a checking account in his and Brother's name to be used exclusively for Connelly's expenses. Kewalramani funded the account because Connelly was running out of cash. He also used one credit card (Citi Hilton) for Connelly's expenses. "This card is always with her and she uses it to pay for her expenses when she goes out to stores with the caregivers." He submitted a spreadsheet of Amazon purchases using Connelly's American Express credit card. In addition to escrow documents, Kewalramani submitted mortgage statements, bank statements, all credit card statements, and Connelly's tax returns from 2005 to 2012 (except the years 2009 and 2010 were missing).

Kewalramani elaborated on the circumstances leading to the decision to hire Brother to move in with and care for Connelly. "I did not want [Connelly] to be living all by herself in the house. Additionally, [Connelly] had started calling me a lot and complaining about being very lonely. I offered to pay [Brother] $1,500 to manage the caregivers, the doctor's appointments and mainly just be there for emergencies. At [Connelly's] age, I believed she needed someone to be living with her."

In a separate declaration, filed the same day, Kewalramani requested an extension to prepare the accounting because it was taking more time than he expected. He also discussed a Trust provision mandating that if the settlor should become incapacitated, the trustee may provide a copy of the Trust and an accounting to a conservator or any person acting as the settlor's agent, but not to "any issue of the settlor" or any "beneficiary." For this reason, Kewalramani maintained none of Connelly's children should receive a copy of the Trust or the accounting. In addition, Kewalramani did not want Connelly's children to have access to his personal bank records, which would be part of the accounting.

VI. *Request to Suspend Trustee*

Believing the frozen accounts and other circumstances were having a detrimental effect on Connelly, the GAL filed a report in early February 2016 asking the court to "suspend" Kewalramani as trustee and temporarily appoint PPF Karen Fritz. The GAL explained Kewalramani failed to file an accounting by the first deadline of December 8, 2015, or by the extended deadline of February 2, 2016. She reminded the court that the bank accounts remained frozen despite the order reducing the bond amount, because Kewalramani had not paid it. The GAL stated Connelly was 81 years old, and required caregivers for seven hours every day plus a housekeeper who prepared meals. A recent medical evaluation confirmed Connelly suffered from severe cognitive impairment, making her vulnerable to financial abuse. The GAL opined the frozen status of her accounts impaired "delivery of care" and it was not in Connelly's best interest to have a trustee who was avoiding his "fiduciary responsibility" to present an accounting.

VII. *Appointment of Conservator*

At a hearing held on February 2, 2016, the court determined a "conservatorship of the estate only [would be] the least restrictive alternative" for Connelly's finances. It determined the conservator proposed by the GAL was suitable and qualified. It appointed Fritz and required a $13,200 bond. In addition, the court ordered Kewalramani to file an accounting five days before the next hearing date (set for April 19, 2016) or face contempt sanctions.

VIII. *Accounting*

In April 2016, Kewalramani, acting in pro. per. filed a "first account current and report of trustee and petition for its settlement." (Capitalization omitted.) He listed all of Connelly's real estate assets for the past 10 years and determined the current value of the Trust estate was $447,936.

In one section of the accounting, Kewalramani explained he and Connelly were in the habit of transferring money between their accounts during and after their

marriage ended. They currently maintained certain joint accounts and credit cards despite their divorce. There was a "ledger account" that tracked all the transfers and Connelly owed him $11,271. Kewalramani stated financial matters became worse after the bank froze Connelly's checking account (in addition to the HELOC account). Kewalramani and Brother used their own money to pay for additional expenses and the amount spent until March 31, 2016, directly from his personal accounts totaled $23,352 "and this is not part of the Summary of Account." He added there was only a preliminary accounting of these additional expenses (exhibit No. 12) and the forensic accountant Raffaele had not reviewed it. Kewalramani stated a more detailed accounting would be provided once the accounts were unfrozen and he was no longer using his own money to pay for Connelly's expenses.

In another section of the accounting, Kewalramani explained why he was unable to provide a full accounting dating back to 2005. He reminded the court that it had asked him to provide whatever documents he possessed, and he had done his best for the years before he became co-trustee (2005 to 2012). He submitted tax returns and bank statements for the last seven years. He added that before 2013, Connelly's income and expenses were so small that an accounting for that period "is immaterial for our purpose."

With respect to the unpaid bond issue, Kewalramani argued the $800,000 bond was too high. "Based on my online research on probate bonds, normally the bond required should be equal to the liquid assets a person has or that can be raised by leveraging the assets. As per an online reverse mortgage calculator, [Connelly] should be able to get a credit line of $273,852 . . . [and] I am willing to submit a bond for this amount" to satisfy the court's condition of purchasing a bond before unfreezing the accounts.

The next section, titled "affiliate relationship" (capitalization omitted), referred to Kewalramani's decision to hire Brother as Connelly's caregiver. He explained Connelly fought with the first caregiver he hired from Connelly's church and

did not work out. Heflin said she did not know anyone to help. He decided to ask Brother to move in with Connelly because he "used to work from home" and he loved and cared for her as a former brother-in-law. He listed all of Brother's duties, which included taking Connelly to doctor's appointments, managing staff, handling emergencies, and caring for Connelly's cat. He paid Brother $1,500 per month, which was less than a professional caregiver. He added Brother had not been paid since March 2015.

The last topic mentioned in the accounting was trustee compensation. Kewalramani stated that in 2013 he helped Connelly sell one of her Victorville properties (he called it the Chinquapin house). In exchange for his assistance, Connelly agreed to split the difference between the first and final purchase offer. Kewalramani was able to obtain a higher sale price, and his cut of the investment property was $10,000. Kewalramani noted he spent at least two days a week with Connelly at her house and at least 10 hours per week managing the Trust, her finances, and "this legal situation." He maintained, "I have made sure that [Connelly] gets the best care, has a good quality of life and is happy. [Connelly] feels loved and cared for when she knows that some[one] who loves her is in the house 24/7 and she can even go to his room even at night time if she needs any help. I have not and do not plan to charge any amount to [the T]rust or estate for all the time I have and will spend for [Connelly's] care."

IX. *Objection to Accounting*

In July 2016, the GAL filed an objection to Kewalramani's first accounting. She noted the accounting is incomplete because it only covered the period from October 1, 2013, through December 31, 2015. The GAL asserted Kewalramani wrongfully maintained joint accounts with Connelly, "thereby exposing her assets to his creditors in violation of his fiduciary duty to avoid commingling pursuant to Probate Code

section 16009.[2] She noted there were entries in the accounting identified simply as transfers into and out of the estate that needed to be identified. Similarly, entries identified as "Funds with [Kewalramani]," that allegedly represented a large debt owed to Kewalramani, suggested another violation of the trustee's duty to avoid commingling. "If [Kewalramani] has made loans to [Connelly] then the loans and repayments must be specifically identified in the [a]ccounting." The GAL argued the accounting with respect to Connelly's real estate transactions was insufficient and incomplete.

The GAL made objections to several categories of expenditures as being excessive and requested Kewalramani be surcharged. The GAL challenged the following entries: (1) $10,323 for gas and $50 charges for visits seven or eight times per month; (2) $18,812 for home improvements lacked supporting documentation; (3) $27,000 for food and groceries appeared to include paying for the caregivers' food; (4) $19,268 was identified as "'Needs to be Researched,'" which suggested the accounting was incomplete and the trustee was not prudently managing the funds; and (5) $5,400 allocated to "'Autopay'" required further explanation.

Heflin also filed an objection. In addition to the problems pointed out by the GAL, Heflin noted Kewalramani failed to pay the health manager, who was hired to provide a report every other month. Due to the lack of payment, Heflin had only received one report.

The probate examiner posted notes regarding defects with the accounting. Kewalramani submitted a declaration and additional documents in response to these notes.

The court scheduled a trial for September 21, 2016. In early August, Kewalramani filed an ex parte petition seeking a continuance, which the GAL opposed.

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[2] All further statutory references are to the Probate Code, unless otherwise indicated.

Our record does not contain a ruling, however, it appears the court denied the motion. The GAL and Kewalramani filed written trial briefs a few days before the scheduled trial.

X. *Trial & Statement of Decision*

At trial, the court considered opening statements by Beti Tsai Bergman (representing Kewalramani), Feldon on behalf of Connelly, Lynne Hayes on behalf of Fritz, and Heflin (who was not represented by counsel). Kewalramani submitted a corrected accounting to address certain items, which the court did not accept as the final accounting but admitted the document as exhibit No. 24. During the six-day trial, the court heard testimony from accountant Donald Trojan, Kewalramani, Fitz, and the GAL (McGonigle). The court took the matter under submission and prepared a statement of decision.

The court's statement of decision clarified the trial involved the following two issues: (1) the petition to appoint a successor trustee, and (2) the trustee's accounting. After reciting a brief factual and procedural history, the court granted the GAL's petition to appoint Fritz as the Trust's successor trustee. It offered several reasons for this decision. First, Kewalramani failed to post the bond required to unfreeze Connelly's accounts. Second, "Evidence showed general mismanagement and failure to account for the [T]rust. Some of the [T]rust assets were in accounts commingled with the Trustee's funds. Trustee had an account with his brother . . . . There was inadequate accounting of sales of real property. There were self-serving spending decisions. Trustee hired his brother, inexperienced in care management, as care manager of [Connelly]. There were duplicate payments and/or overlay of expenses. There was failure to account for dining expenses, gas and mileage, payments to doctors and alternative remedies and services. Overall Trustee did not require regular receipts and proof of services and necessity thereof before making payments. His brother . . . caused an extra layer of overhead. Moreover he paid [Brother] for six (6) months [of] services although [Connelly] was in assisted living."

The court rejected Kewalramani's argument he should not be removed because "the one who controls the money controls the care." It stated that although Kewalramani controlled the money he "hired caregivers from Craigslist without screening them and used his hiring of [Brother] as a self-serving defense that [Brother] supervised them. This added an overlay of unnecessary expenses to the detriment of the Trust. Another failure to account [was] the trustee's payment for [Brother's gas] without records and without showing necessity and paying [Brother] for doctor visits rather than paying the doctor directly. Trustee's granting [Brother] debt card access without an accounting or show of necessity [was] another example of improper management."

With respect to the accounting, the court disallowed the "First Account Current" and the "Corrected First Account," disallowed certain expenditures from the First Account Current, and ordered surcharges. It noted Trojan testified in support of a "corrected accounting" (exhibit No. 24). The court recalled Trojan testified, "numerous entries were not supported by bank statements which were not made available to him. While it does provide more explanation and information this does not address the actions of [Kewalramani] as a fiduciary." The court determined there was evidence Kewalramani and Connelly had a close relationship and he routinely moved her assets into his accounts or joint accounts. "For many years he expended funds from the Trust without regard to conserving the estate, obtaining receipts, and negotiating contracts. There is no evidence showing he did not genuinely care for the health and emotional well-being of [Connelly]. However, the evidence showed [he] took an imperious role both as to her care and her finances."

The court added, there was no evidence suggesting disbursements from the Trust were "at the direction" of Connelly, "despite his claim that a settlor may do as they wish with their assets." For this reason, the court disallowed the following expenditures: (1) $10,000 gas; (2) $12,000 groceries; (3) $27,000 home repairs; (4) $8,164 legal fees while Connelly had court appointed counsel; (5) $1,188 credit card charges; (6) $8,185

unidentified American Express credit card charges; (7) $18,000 fees for Brother's care management; and (8) $11,271 payment to Kewalramani relating to real estate sales. In addition to this total sum of $95,808, the court determined Kewalramani would be surcharged with transfers made to himself, listed on Schedule H of Trojan's corrected accounting (exhibit No. 24). These transfers totaled $205,417. The court concluded the total surcharge against Kewalramani was $301,225. The court decided not to impose additional damages available under the Probate Code because the fiduciary breaches were not done with malice or fraud.

At the end of the statement of decision, the court discussed Kewalramani's accounting failures as further supporting its decision to remove him as trustee. It stated Kewalramani commingled assets, did not document loans, and failed to file a tax return, which could affect Connelly's social security benefits. "His removal is supported by the evidence showing his inability to manage the financial resources of the estate and failure to exercise the duties of trustee in the best interests of the [c]onservatee . . . . Therefore, he should be removed pursuant to . . . section 15642[, subdivision] (b)."

DISCUSSION

I. *Court Ordered Accounting for 10 years*

Kewalramani maintains the court committed prejudicial error by ordering him to account for a seven-year period before he became trustee. The court ordered the accounting of the estate to include 2005 through 2015. Kewalramani became co-trustee in 2013.

Kewalramani recognizes a trustee has a duty to account pursuant to sections 16062 and 17200. He correctly acknowledges the purpose of an accounting is to hold the trustee responsible for management of the trust. (Citing *Blackmon v. Hale* (1970) 1 Cal.3d 548, 560 ["'[t]rustees are . . . under an obligation to render to beneficiaries a full account of all their dealings with the trust property, and where there has been a negligent failure to keep true accounts all presumptions are against them'"].)

Based on this legal authority, Kewalramani concludes it is unfair to hold a trustee responsible for what happened before the trustee was appointed. Kewalramani maintains the court unfairly imposed liability "without corresponding obligation." He argues the court violated notions of due process to hold him responsible for matters that were not in his control. He adds the court set him up for "failure" because certain information predating his appointment was unavailable, and as a result, the accounting was incomplete. Essentially, Kewalramani maintains the court improperly held him financially responsible for failing to keep accurate accounts from 2005 to 2013. The record does not support this contention.

Kewalramani brushes over the fact the court did not ask him to provide a detailed accounting for the years 2005 to 2013. The parties understood the accounting for this period concerned only information about large assets, such as real estate sales, loans, inheritances, and retirement accounts. On September 15, 2015, the GAL asked for a 10-year accounting because that was "when the major financial transactions" took place. When Kewalramani objected on the grounds he was not trustee until 2013, the GAL clarified what was needed was "a generalized accounting more for the large assets," or in other words, "an explanation of the liquidation of the real properties and there were investment accounts that were alleged to have existed." The GAL added Connelly inherited a large sum of money "at some point" and it was unclear where the money went and why Connelly now qualified for Medicaid.

At the hearing, the court asked Kewalramani "to account for the proceeds of sales of real properties from 2005 to the present" as well as "all bank, retirement, and investment accounts," and also "any loans" on Connelly's assets. As it turns out Kewalramani was able to locate and submit the requested information. This is likely because he and Connelly were married from 2006 to 2011, and as Kewalramani admitted in his briefing, after the amicable divorce "they continued keeping their financial affairs and bank accounts the way they were, and did not close their joint accounts."

Kewalramani does not provide a record reference, and we found nothing in the court's ruling, indicating the court imposed liability based on an incomplete accounting of financial transactions taking place from 2005 to 2013. Kewalramani must show he was prejudiced by the order before we can rule there was reversible error.

In raising this contention, we noticed Kewalramani failed to discuss the basis for the court's surcharge ruling. After independently reviewing the detailed profit and loss statements Kewalramani submitted at trial (exhibit No. 24), we understand why. Kewalramani's liability (surcharges) related to expenses listed in the detailed accounting for the period *he was acting as trustee* (starting September 12, 2013). For example, the court surcharged Kewalramani for gas expenses totaling $10,000. Exhibit No. 24's detailed profit and loss statement (September 12, 2013, through October 27, 2015) listed all the gas expenditures from September 17, 2013, to October 22, 2015, which totaled $10,326.98. It appears the trial court rounded the sum to $10,000. The surcharges directly correspond to when Kewalramani was acting as trustee.

Another example is the court's surcharge of $8,185 for "[u]nidentified American Express [p]ayments." Exhibit No. 24 lists four American Express payment from January 2014 to May 2015 totaling $8,185.83. These charges were made while Kewalramani was trustee. Kewalramani does not specifically point to any surcharge relating to the time before he was trustee (2005 through 2013). We conclude the court appropriately held Kewalramani liable for failing to properly account *for the time he was trustee*.

II. *No Credit for Deposits/Disbursements*

Kewalramani maintains the court unfairly penalized him for withdrawing $205,417 from Connelly's bank accounts, but failed to credit him with $216,136.53 deposited into her accounts. To support this claim, Kewalramani points to one document (Schedule H), prepared by his accountant Trojan. He argues this document shows Kewalramani transferred money out and "back" to Connelly, and calculations show

Connelly owes Kewalramani $10,718. The remainder of Kewalramani's argument is devoted to offering reasons why it was appropriate to commingle his and Connelly's funds. He concludes that because there is no dispute "funds were returned" or that Kewalramani paid bills (made disbursements) on Connelly's behalf after her bank accounts were frozen, section 15684 requires repayment. He states, "the court erroneously did not credit Kewalramani for the $216,136.53." We note Kewalramani does not cite any case authority to support this argument. He fails to appreciate the "reimbursement" of trust-related expenses is not the same thing as offsetting money taken from the trust for unexplained expenses.

Trustees are entitled to *reimbursement* from the trust estate for two categories of expenses: (1) "[e]xpenditures that were properly incurred in the administration of the trust[,]" and (2) "[t]o the extent that they benefitted the trust, expenditures that were not properly incurred in the administration of the trust." (§ 15684.) A court must determine if the trustee's expenses fit into either of these categories. For example, because trust administration includes preparing an accounting and responding to challenges by beneficiaries, attorney fees relating to those accounting matters will fall within the first category of expenditures. (*Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234-235.) Attorney fees related to defending the trustee fall into the second category if the court determines "'such litigation is a benefit and a service to the trust.' [Citation.]" (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1461.) Thus, a "neutral trustee" may be reimbursed for litigation for actions taken "to defend the trust and protect its assets" but not for litigation pursued for the trustee's own interest. (*Id.* at p. 1464.)

We found case authority permitting courts to reimburse trustees for a wide range of *trust administration* expenses. (E.g., *Bixby v. Hotchkis* (1943) 58 Cal.App.2d 445, 453 [paying insurance premiums and accountant fees]; *Purdy v. Johnson* (1917) 174 Cal. 521, 530 [bank interest payments]; *Rutherford v. Ott* (1918) 37 Cal.App. 47, 49

[necessary real estate brokerage fees paid by trustee obligated to sell trust property and distribute proceeds to beneficiaries].) Not surprisingly, we found no case authority holding a trustee can seek reimbursement under section 15684 for personally paying bills relating to a settlor's personal and everyday needs. Foreseeably, this need would only arise if the Trustee was inappropriately commingling funds and not properly accounting for the use of Trust assets.

In this case, the first and second pages of Schedule H shows Kewalramani transferred $205,417 to himself from several different accounts belonging to the Trust. The only information provided is the names of the accounts involved in the transfers. Kewalramani does not suggest these sums represent "expenditures" related to administration of the trust as described in section 15684. To the contrary, Kewalramani's briefing concedes these funds represented his habit of commingling funds. This conduct was a violation of his statutory duties as Trustee. (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 888 [trustee has "duty not to use trust property for the trustee's own profit or for any other purpose unconnected with the trust"]; §§ 16002, 16004, 16040.)

The rest of Schedule H (10 pages) lists "disbursements" Kewalramani allegedly made on behalf of Connelly. It appears these are the "expenditures" Kewalramani believes he was entitled to be reimbursed for under section 15684. Two pages are devoted to listing the names of accounts involved in transferring a total of $148,841.34 to Connelly's accounts. The accounting does not explain the reason for each transfer. More importantly, the transfers represent payments to Connelly, not trust administration expenses to third parties (lawyers, accountants, or brokers). Clearly, Kewalramani is not seeking reimbursement from the trust, but rather a "credit" to mitigate his misconduct of using trust property for his own purposes. The purpose of section 15684 is not to provide offsets against misappropriated funds.

The remaining pages of Schedule H look similar to a detailed profit and loss statement. The statement categorized Kewalramani's alleged payments for bank

charges, a care manager (Brother), a convalescent facility, other caregivers, living expenses, charitable donations, entertainment, food, groceries, supplies, pet care, medical supplies, prescriptions, and other bills relating to Connelly's care. Many of the payments predate the time when Connelly's accounts became frozen in October 2015, but Kewalramani does not offer any explanation as to why it was necessary to use his own money to pay these bills. He also does not explain how these expenses related to "administration of the trust" or "benefitted the trust" as required by section 15684. The record shows Kewalramani did not make a claim for reimbursement in the accounting, or file a petition for reimbursement. All the expenses appear to be related to Connelly's personal care, and Kewalramani wishes to use them to offset the funds inexplicably removed from Connelly's account. This would be an inappropriate use of section 15684.

Moreover, there were evidentiary problems with Schedule H (contained in exhibit No. 24). Schedule H was not part of Kewalramani's previously submitted accountings. Kewalramani's accountant took Kewalramani's "First Account Current" and reformatted the information to address objections and use the accepted categories required for probate accountings. Connelly's attorney objected to admission of the corrected version, and to having Trojan testify because Trojan could not verify or speak to the truth of the substance of the transactions. In reformatting the prior accounting, Trojan could not say whether the documents provided to him were accurate. Kewalramani's attorney assured the trial court that Trojan's testimony would be limited to discussing the format, not the substance, of the corrected accounting. The court ruled Trojan could not testify as to the purpose of the transactions and noted much of exhibit No. 24 lacked foundation because Trojan's role was limited to simply organizing the information provided by Kewalramani. The court admitted exhibit No. 24 but clarified the document would not serve as the final accounting. In other words, Trojan could not testify regarding whether any of the alleged disbursements were actually made, the purpose of any transfers, or the net effect of the money transfers.

Simply stated, there was insufficient evidence to support Kewalramani's claim that an offset, credit, or $10,000 reimbursement should have been awarded based on a simple comparison of the commingled funds (subtracting the total sum "put in" from what was "taken out"). Furthermore, to condone such nontransparent, unverifiable, careless accounting would turn the statutory scheme defining the fiduciary duties for trustees on its head. We conclude the trial court reasonably examined the bigger picture presented by the relationship between the parties and their financial history before ruling. Kewalramani cannot claim a credit/offset because his lack of oversight, commingling of funds, lack of accounting, and failure to prudently manage the estate resulted in significant losses to the Trust estate ($1.3 million in assets depleted to a little over $400,000). What is left of the Trust estate must be preserved for Connelly, who will require significant assistance in the future due to her failing health and mental challenges.

III. *Surcharges*

Citing section 16440, Kewalramani asserts a trustee may only be surcharged for "sums reasonably calculated to compensate the trust for losses due to the trustee's deficient administration of the trust." He cites case authority holding a trustee who did not act fraudulently, or did not personally benefit from his negligence, can only be held liable for "the amount of loss actually suffered by the trust beneficiaries." (*Estate of Gump* (1982) 128 Cal.App.3d 111, 117 (*Gump*).) He concludes there was no evidence of loss, and therefore, the court's surcharge was not justified for the following expenses: (1) $27,000 home repairs; (2) $8,185 American Express payments; (3) $12,000 groceries; (4) $10,000 gas; (5) $8,164 legal fees; and (6) $1,188 credit card charges. He misunderstands the nature of the court's ruling and section 16440.

We begin our analysis by reviewing the one case cited by Kewalramani. In *Gump, supra,* 128 Cal.App.3d 111, 116, the trustee was a bank and the appellate court reduced the trustee's compensation based on the finding the bank acted negligently in one area of trust administration involving a leasehold interest. The bank maintained it was

entitled to reasonable compensation for its services managing the trust property unrelated to the leasehold. (*Ibid.*) The appellate court agreed, recognizing the trial court had broad discretion in setting a trustee's compensation but also noted the lack of evidence to support the trial court's decision to reduce compensation in an amount greater than what the trust estate lost due to the mismanaged lease. It held the measure of a trustee's liability "is generally limited to the amount of loss actually suffered by the trust beneficiaries." (*Id.* at p. 117.) The case was remanded with the directions for the trial court to reevaluate the actual losses suffered so it could be surcharged against the trustee's reasonable compensation. (*Id.* at p. 119.)

This case authority provides guidance as to how a court should exercise its discretion in *setting the trustee's compensation* when faced with a trustee's beach of duty with respect to some but not all aspects of the trust estate. (*Gump, supra*, 128 Cal.App.3d at pp. 116-117.) It is inapt here because trustee compensation was not an issue in this case. Kewalramani did not request nor was he awarded compensation. The surcharges were based on items the court disallowed from Kewalramani's accounting on the grounds he failed to preserve trust assets, made expenditures for unnecessary items, and failed to present receipts to verify the costs.

Section 16440, subdivision (a), permits the court to impose surcharges to compensate the trust for losses due to the trustee's deficient administration of the trust. Before addressing each surcharge, it is helpful to review the applicable standards for trustees. In general, the trustee must abide by certain codified duties, including "the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account. [Citations.]" (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 462-463 (*Atascadero*); §§ 16000-16015.) The trustee is to carry out these duties and administer the trust "with reasonable care, skill, and caution under the circumstances then prevailing that a prudent

person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument." (§ 16040, subd. (a).) "The violation by a trustee of any duty owed to the beneficiaries of the trust constitutes a breach of trust. [Citation.]" (*Atascadero, supra,* 68 Cal.App.4th at p. 462; § 16400.)

When third parties or beneficiaries raise objections to an accounting, they commonly raise surcharge claims against the trustees for "'purported acts of misconduct, neglect, waste, mismanagement or other breach of fiduciary duty.'" (*Estate of Fain* (1999) 75 Cal.App.4th 973, 991.) A surcharge request is an "affirmative allegation," which results in the burden of proof being upon the beneficiary/objector. (*Estate of Kirkpatrick* (1952) 109 Cal.App.2d 709, 713.) Once the objector has proven the existence of a fiduciary duty and the trustee's breach, "the burden then shifts to the trustee to justify its actions." (*LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517.) When a court determines to surcharge a trustee based on a finding of breach of trust, we review that determination under an abuse of discretion standard. Thus, in this case, we consider if there was sufficient evidence to support the court's conclusion Kewalramani's deficient administration constituted a breach of trust and that the breach caused the Trust to incur excessive, unnecessary, or unexplained fees justifying the various surcharges. (See *Estate of Bonaccorsi* (1999) 69 Cal.App.4th 462, 467-468, 472.)

The court determined Kewalramani mismanaged the administration of the Trust. This ruling is well supported by evidence Kewalramani improperly dealt with the Trust's assets by commingling, unnecessary spending, and failing to properly account for his spending. In this appeal, Kewalramani does not dispute his mismanagement of the Trust, only the degree of his negligence. He maintains he was acting in good faith to care for Connelly. He fails to appreciate that the transgression of commingling supports a finding of gross negligence and liability. (*Estate of Bonaccorsi, supra,* 69 Cal.App.4th at

p. 470; *Estate of McCabe* (1950) 98 Cal.App.2d 503, 508.) Similarly, the failure to maintain proper records is an omission rising to the level of gross negligence warranting liability. (*Estate of Bonaccorsi, supra*, 69 Cal.App.4th at p. 469; *Estate of McCabe, supra*, 98 Cal.App.2d at p. 505.)

"[W]here there has been a negligent failure to keep true accounts, or a refusal to account, all presumptions will be against the trustee upon a settlement. [Citations.]" (*Purdy v. Johnson* (1917) 174 Cal. 521, 527.) In such cases, liability may be imposed regardless of intent. "[C]onceding the good faith of the trustees, the fact remains that they had, by their own admission, failed to comply with the obligation which rests upon all trustees to keep full and accurate accounts of the trust funds coming into their hands, and to render an account thereof to their beneficiaries." (*Ibid.*) Thus, to the extent that trustees are unable to establish the accuracy of their accounts, "the computation must be made upon the basis most unfavorable to them." (*Id.* at p. 530.)

Applying the above legal authority, we conclude the court did not abuse its discretion by imposing any of the surcharges Kewalramani disputes on appeal. We will address each one separately.

A. *Home Repairs*

After receiving the initial accounting, the GAL opposed the charge of $18,812 for "home improvements" over the two-year accounting period, including $6,000 paid to Brother. The GAL asserted Kewalramani must provide receipts for proof of these kinds of transactions. Heflin objected that many of the bills "seem excessive." After receiving these objections, Kewalramani submitted copies of store receipts and copies of checks. For example, he paid over $5,000 to Israel Mondragon, but failed to provide corresponding detailed invoices or documentation describing what the payments were for. At trial, he clarified he did not pay Brother to undertake home maintenance projects, but reimbursed Brother who sometimes paid the contractors. He also explained the home improvement costs related to installing a solar system, replacing a dishwasher,

installing handrails and ramps, painting the house, pulling up the carpet and restoring the hardwood floors underneath, termite services, and house cleaning. At trial, he submitted a corrected accounting (exhibit No. 24), which listed a total of $27,146 in home repairs.

In his briefing, Kewalramani maintains this surcharge was erroneous because the GAL did not object to these expenses during her trial testimony and there was evidence these transactions benefitted Connelly. He added, "There is no law that forbids a trustee from making home repairs" to make sure Connelly's home was in a "livable" and safe condition.

We conclude the GAL did not need to object a second time to the "home improvements" category of expenses in the accounting. Her written opposition in response to the initial accounting was sufficient. Moreover, the test is not whether Connelly benefited from living in a remodeled home. The question is whether Kewalramani mismanaged the trust assets by embarking on expensive home improvements when Connelly's finances were dwindling and her needs for medical care were escalating. It was reasonable for the trial court to conclude these expenses were excessive and unnecessary. Solar heating and wooden floors are not necessary for someone in Connelly's financial circumstances requiring all day and night medical care, long-term stays in assisted living facilities, and other necessities for survival such as food.

B. *Groceries/Food*

The GAL objected to Kewalramani paying $27,000 for food and groceries because Kewalramani reported this sum included Connelly paying for her caregivers' food. The GAL asserted these charges are excessive and Kewalramani should be surcharged. Kewalramani testified Connelly and her caregivers dined out "at least twice a day." He did not keep track of the money spent on meals for the caregivers, which was not a benefit listed in their employment contract. Kewalramani also used Trust assets to pay for his and Brother's meals when they were with Connelly. Some of the bills for fast

food were solely for caregivers. Kewalramani explained one caregiver "didn't have a car. So – and rather than me allowing her to go out and get her own food and made it very messy . . . I remember at least once or twice she asked me to get her lunch, and I got her lunch rather than she going out. And she used to like Jack in the Box." In other words, to avoid caretakers making a "mess" in the house, Kewalramani would use Trust assets to provide tidier fast food meals. It is unclear why Kewalramani purchased any groceries because it appears Connelly primarily dined out for her meals.

Kewalramani testified approximately 10 percent of the food and grocery bills were to feed caregivers. Because he did not have documentation to support this assertion, we conclude it was reasonable for the court to disbelieve this testimony and estimate the caregiver's portion of every restaurant tab was closer to 50 percent. It is more likely one meal would be one-half, not just 10 percent, of a two-person restaurant bill. This estimate is supported by Kewalramani's testimony that if the caregiver was taking Connelly to Marie Calendars "I would not expect him to bring his own brown bag or something to sit there or maybe not even eat lunch over there. [¶] She is sitting there for lunch, and I . . . believe I'm expected to pay for his lunch or dinner, whichever case it was." On appeal, he maintains, "it makes sense" to offer the caretaker food because they "usually do not get the option to take a lunch break away from the senior person."

Leaving aside the other red flags raised by this argument, we note Kewalramani does not maintain the trial court erred in surcharging him for a portion of the grocery/food expenses. Rather, the focus of his argument is the court did not provide any calculations for why it surcharged $12,000 of the total $22,290 grocery/food bill. It appears the court surcharged Kewalramani for approximately half of the total sum, which reflects the factual finding Kewalramani was paying for the caregivers' meals when they dined with Connelly, i.e., approximately half of each bill.

C. *American Express Charges*

Kewalramani acknowledges he failed to identify the reasons for the American Express payments (totaling $8,185). There was evidence the card was being used by Kewalramani, Brother, and one of the caregivers, and therefore, there is no way of verifying the charges related to expenses for Connelly's care. In his appeal, Kewalramani argues these charges should not be surcharged because there was no specific objection raised before or during trial about these payments. He maintains the GAL waited until closing argument to request a surcharge for these unidentified charges, which was too late.

Kewalramani does not provide any legal analysis or case authority to support this contention. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 (*Kim*) [waiver of contentions unsupported by legal or factual analysis].) Moreover, the record shows Kewalramani did not list the American Express payments in his original accounting, which explains why the GAL did not file an objection before trial. The original accounting simply stated Connelly's current available cash was $7,000 less, due to an outstanding American Express credit card balance. It was a supplemental declaration/accounting that provided a summary of American Express payments from 2012 to 2015, none of which were identified. We conclude the GAL's broadly stated, generalized objections to the entire accounting covered the mysterious American Express payments.

Kewalramani also maintains the court surcharged him three times for the same bills. First, he maintains the American Express credit card charges appear on "Schedule H" (submitted at trial) as a disbursement made by Kewalramani on behalf of Connelly because he paid the credit card company from his personal funds. Second, Kewalramani "transferred funds to himself to reimburse him for this payment made on Connelly's behalf" and is part of the $205,417 surcharge. Third, "many" payments for credit card charges of the trust (shown on Schedule C of exhibit no. 24) "have already

been surcharged, this means that same amount has been surcharged for a third time." This argument fails for the same reason the court refused to accept the accounting, i.e., all the bills are unidentified. Without proper documentation and identification, we cannot assume the same American Express bills were surcharged three times. We will not speculate that the same bill listed in Schedule H was also part of the total $205,417 surcharge and could also be one of the bills listed on Schedule C.

D. *Gas Expenses*

Kewalramani used Trust funds to fill the gas tanks of his car and Brother's car. Kewalramani testified he filled his tank on a regular basis because he was driving from Los Angeles to Garden Grove to visit Connelly. However, Brother's gas bill was similar to Kewalramani's, and he lived in Connelly's home. The GAL calculated the gas charges averaged $500 per month. Kewalramani did not calculate mileage costs, and Brother did not provide any receipts or gas statements. The GAL argued these expenses were excessive because, in the absence of adequate documentation, there was a strong inference Kewalramani and Brother used gas paid for by Connelly for their personal use. In addition, the GAL opined $500 per month for gas expenses was too high in light of Connelly's financial circumstances and indicated Kewalramani was mismanaging Trust assets.

On appeal, Kewalramani cites a Labor Code provision to assert Kewalramani was required by law to *reimburse employees* for gas. (Lab. Code, § 2802.) However, Kewalramani was a Trustee, not an employer, and this provision does not apply to him. To the extent Brother was an employee of the Trust, there was inadequate documentation to support the conclusion his vehicle was used in the scope of employment versus his personal use. Moreover, there was evidence suggesting Brother's employment as manager of the other caregivers was an excessive expense, adding an unnecessary layer of expense over and above the expense of the other caregivers. In this appeal, Kewalramani does not dispute the court's decision to disallow the expenses

relating to Brother from the accounting and the $18,000 surcharge for the cost of Brother's employment. Accordingly, we cannot say the court abused its discretion in concluding Kewalramani's decision to use Trust assets for costly gas reimbursements for an unnecessary employee was mismanaging trust assets and must be surcharged.

E. *Legal Fees*

The GAL objected to Kewalramani spending $8,164 in attorney fees because Connelly had court appointed counsel. Our record does not show the exact date when the trial court appointed the public defender to represent Connelly, but the first minute order included in our record shows the public defender made an appearance for Connelly in May 2015. Kewalramani does not mention if he addressed this objection below. On appeal, he maintains there was no evidence the legal expenses were incurred when she had court appointed counsel, and "many" expenses were incurred by Connelly with her estate attorney. However, he does not provide record citations to support this contention. As mentioned earlier, once the objection was raised the burden shifted to Kewalramani to justify his actions. He failed to adequately justify the legal fee expenses below or on appeal. We find no reason to disturb the court's equitable ruling.

F. *Credit Card Financial Charges*

Kewalramani asserts the $1,188 in credit card charges includes the bank's monthly fees, annual fees of credit cards, and finance charges. The GAL objected on the grounds that a fiduciary should manage the accounts to avoid finance charges. On appeal, Kewalramani asserts there is no law forbidding finance charges, and some of the fees are not finance charges. He is wrong.

Exhibit No. 24's Schedule C lists several expenses. Under the heading, "Bank, Credit Card, Check Fees" there are four subdivisions as follows: (1) "Bank Charges" relating to two Chase Bank accounts (totaling $176.30); (2) "Credit Card Fees" relating to a Capital One credit card (totaling $59); (3) "Credit Card Interest" relating to "Purchase Finance Charges" for Capital One and American Express credit cards (totaling

$1,188.30); and (4) "Credit Reporting Services" paid by the American Express credit card to both TransUnion and CreditSecure each month (totaling $751.50).

Schedule C lists the "Total Bank, Credit Card, Check Fees" as $2,175. Thus, contrary to Kewalramani's contention on appeal, the surcharge of $1,188 matches the number listed in his own accounting records as representing only the sum of credit card finance charges. Schedule C reflects the other banking charges and monthly fees were accounted for separately from credit card finance charges.

While Kewalramani correctly notes there is no legislation forbidding finance charges, there are however, statutes describing trustee fiduciary duties that relate to preserving and investing trust assets. The burden shifted to Kewalramani to justify his actions of not paying off the credit card bills each month, a simple way to avoid incurring finance charges. The court could reasonably conclude the expense arose from mismanagement of Connelly's accounts and was not necessary to her care and maintenance.

G. *Trustee Compensation*

In Kewalramani's initial accounting, he explained Connelly paid him $10,000 in 2013 because he helped her sell the Chinquapin house in Victorville. The house was sold on October 22, 2013, which was 10 days *after* he was appointed trustee. He explained Connelly agreed to split the difference between the first offer and higher final offer she accepted. Next, he described the time it took to perform his trustee duties from 2013 to 2015. He stated he did not plan to seek compensation for the time working as trustee. Although he does not explain the connection between the $10,000 payment with his decision not to seek trustee compensation, it is reasonable to infer he considers the payment as equating to some form of compensation.

In his trial brief, Kewalramani provided more details about the source of his compensation. He stated the sale proceeds ($152,638) from the Chinquapin Victorville property were first deposited into a Chase account held jointly by Connelly and

Kewalramani. Kewalramani recalled, "About $140,000 of those proceeds were then transferred to [his] personal accounts *to earn more interest*. . . . At that time, [Connelly] was having a lot of problems with[] Heflin asking for money. She did not want her daughter to know about her funds." (Italics added.) Kewalramani stated he used these funds to benefit Connelly, as reported on Schedules B-1, D-2, and H of the Corrected First Account "and the net effect is about $10,000 owed to [Kewalramani]."

The trial brief offers a different story from the accounting about where Kewalramani deposited the real estate sale proceeds. The more recent version of events suggests $12,638 of the proceeds were kept in a joint account, and he transferred $140,000 into his personal accounts, which he allegedly used to pay Connelly's bills. Kewalramani did not explain what happened to the $12,638 placed in the joint account. He did not account for how much interest he earned on the money while it was sitting in his private accounts.

The court surcharged Kewalramani for the "transfer" of $11,271 from the "sale of [the] Chinquapin real property." (Capitalization omitted.) Kewalramani recognizes that because he paid himself from the sale proceeds, "there may be an appearance of self-dealing." He argues that because he was not being compensated as trustee, "it was not inappropriate for Connelly to offer to compensate Kewalramani for the work he had to do to get a higher price for the property." He adds there is evidence to support the conclusion he was compensated $10,000, not $11,271. He claims there is nothing in the record suggesting why the court added $1,217 to the total sum.

We were dismayed Respondent failed to address this possible miscalculation or explain the factual basis for the court's ruling. Our independent review of the record uncovered the $1,217 figure was self-reported by Kewalramani in his April 2016 "first account current." He claimed this sum represented what Connelly owed him based on the spreadsheet he prepared, which tracked the transfers between their personal

and joint accounts. It is undisputed Kewalramani put the real estate sale proceeds into his personal accounts.

Receiving such a large sum of compensation, just one week after becoming trustee, strongly suggests Kewalramani wrongfully engaged in self-dealing with Trust assets. If we assume for the sake of argument that Kewalramani received over $10,000 as trustee compensation for future services, the court certainly had the right to disallow it due to ample evidence Kewalramani mismanaged and negligently depleted the Trust for several years. (*Estate of Gump* (1991) 1 Cal.App.4th 582, 599 ["the beneficiary should not be required to compensate the trustee for services which were rendered negligently or in breach of trust"].) On a final note, we are not concerned that the court surcharged Kewalramani $11,271 rather than $10,000, because both figures were self-reported by Kewalramani in his accountings as representing the amount of compensation Connelly owed him from the commingled accounts.

IV. *Expert Testimony*

The GAL, McGonigle, was not designated as an expert witness. Kewalramani maintains the court erred in permitting McGonigle to testify as an expert. The record shows the court did not allow McGonigle to testify as an expert and, in any event, the nature of the testimony concerned an issue Kewalramani had abandoned on appeal. Accordingly, Kewalramani cannot show he was prejudiced by the purported error.

In his briefing, Kewalramani omits the fact he called McGonigle to the stand to testify as a witness. His attorney, Bergman, conducted direct examination and asked questions related to the reasons she filed objections to the accounting and what she observed in other accountings Connelly's attorney, Feldon, cross-examined McGonigle and asked if she believed the accounting was deficient and to explain why. Kewalramani did not object to this testimony.

Bergman objected when Feldon asked McGonigle if she thought Kewalramani should be removed as trustee. He argued the question called for argument and expert witness opinion testimony, not factual testimony. The court agreed McGonigle could testify as GAL, but not as an expert.

Feldon argued, "even if she's not an expert, she can still say why she filed objections," which would relate to her personal state of mind when preparing the documents. He added that Bergman was asking the court "to have the best of both worlds; to be able to ask her questions about [her] positions," but objecting to the question asking her motivation for filing the objections. Feldon maintained he was not seeking opinion testimony on the truth of the situation, i.e., the appropriate amount that should be spent by any trustee on gas. He clarified the GAL was called as a witness and should be permitted to testify about her personal knowledge about the reasons she made the filings in the case. Persuaded by this argument, the court overruled Bergman's objection.

McGonigle testified she filed the document to remove Kewalramani as trustee because she did not believe he was complying with his fiduciary duty to not comingle funds and to properly account. She added the filing was based on her determination Kewalramani did not meet the standard of care of a trustee as required by section 16000. She stated there was nothing she heard at trial that would make her think Kewalramani should continue as trustee. The trial confirmed her belief there were problems with his accounting.

The record reflects the court did not consider McGonigle an expert, but rather a witness testifying in her role as the GAL of Connelly's estate and person. Moreover, Kewalramani does not provide case authority, specific record citations, or legal analysis to explain what specific statements he believes were impermissible expert witness testimony. We deem the matter waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785, ["When an appellant fails to raise a point, or asserts it but fails

to support it with reasoned argument and citations to authority, we treat the point as waived"]; *Kim, supra*, 17 Cal.App.4th at p. 979; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3 [reviewing court may disregard contentions unsupported by legal or factual analysis].)

Even if the issue were not waived, Kewalramani cannot prove any prejudice by the purported error because the testimony related to his removal as trustee, which he abandoned in this appeal. (Cal. Const., art. VI, § 13 [no judgment shall be set aside on the ground of evidentiary error unless error resulted in miscarriage of justice]; Evid. Code, § 353; see generally *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105-106.) We recognize Kewalramani's counsel elicited some testimony on direct examination that related to some of the accounting issues on appeal. However, "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error. [Citations.]" (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 212.) In light of all of the above, we do not find reversal to be appropriate.

DISPOSITION

The orders are affirmed. Respondent shall recover her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.